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SUBJECT: ATTORNEY GENERAL GONZALES DISCUSSES TERRORISM AND
DATA-SHARING WITH GERMAN INTERIOR AND JUSTICE MINISTERS

Classified By: DEPUTY CHIEF OF MISSION JOHN M. KOENIG FOR REASONS 1.4
(b) AND (d)

Summary

11. (C) The Attorney General, in meetings with German Interior Minister Wolfgang Schaeuble and Justice Minister Brigitte Zypries, reviewed the legal basis on which the USG is engaged in the global fight against terror and discussed in particular the Military Commissions Act recently signed by President Bush. The Attorney General also examined areas where the U.S. and Germany might be able to cooperate more closely, in particular in further exchanging essential information. Schaeuble underscored Germany's desire to continue discussions with the U.S. on the legal basis for fighting international terrorism and on more access to terrorism-related data. Zypries expressed reservations about the provisions of the Military Commissions Act, arguing that it is inappropriate for military tribunals to try civilians, even those who have engaged in hostile acts. The AG explained the legal background of the term "unlawful enemy combatant" and noted that it is both lawful and appropriate to resort to military tribunals in cases involving armed conflict, even with non-state actors. Discussion also focused on intellectual property rights, in particular Germany's work with China. Zypries requested U.S. intervention to block a lawsuit filed against the German foundation that is responsible for compensation to Holocaust victims. While in Berlin, AG Gonzales also gave a speech and held a round table discussion with senior media editors. End Summary.

Counterterrorism policies -- image and reality

12. (C) The Attorney General began the discussion with Interior Minister Wolfgang Schaeuble by noting that the image of the United States has suffered in the eyes of many Europeans, in large part due to misconceptions about U.S. counterterrorism policies. He also said that we have at times not articulated our policies as clearly or effectively as we would have liked. This visit and the public/media events are part of our efforts to address this. The AG also noted that the Military Commissions Act of 2006 (MCA) will better regulate how we deal with detainees and thus serve to clear up misunderstandings.

13. (C) Schaeuble agreed that there are problems with the U.S. image, and expressed appreciation for the AG's readiness to engage in a dialogue on counterterrorism issues. Schaeuble said countries' constitutional law along with

international law are key factors in how the world deals with terrorists; he noted that he had supported (unsuccessfully) a constitutional amendment that would have given the German government the authority to utilize the military to act if Germany faced a 9/11 type terrorist attack. In Schaeuble's view, we need to discuss new approaches to international legal principles to deal with today's realities -- many provisions of the Geneva Conventions, for example, do not fit with the nature of today's terrorism threats.

¶4. (C) The AG agreed, observing that we share the same overarching goals, but at times differ in our approaches and tactics. He stressed that the U.S. is not/not walking back from the Geneva Conventions, but agreed with Schaeuble that some aspects of the conventions are not appropriate to deal with the phenomenon of non-state actors such as Al Qaida. AG Gonzales stated U.S. counterterrorism programs and policies are in full compliance with U.S. laws and with our international treaty obligations.

Legal basis for counterterrorism cooperation and
enhanced exchange of data

¶5. (C) Schaeuble underscored the German desire to continue discussions with the U.S. on the legal basis for fighting international terrorism and asked if the AG thought it would be better to hold such talks in the EU context or with specific EU members. Schaeuble expressed a preference for the latter option, with initial talks to include Germany, France, "and perhaps the UK." Schaeuble indicated Germany is ready to begin such consultations and asked the AG let Germany know when we would be ready.

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¶6. (C) Schaeuble also raised the issue of granting greater reciprocal access to terrorism-related data, along the lines of the provisions of the so-called Pruem Agreement among several EU Member States. Having looked further at the agreement after meetings with Secretary Chertoff and others in Washington, Schaeuble said, while it is only applicable to EU members, Pruem can serve as a practical model for a bilateral agreement with the U.S. for increased access to information. He noted the German constitutional issues affecting data sharing, explaining that data-protection is a fundamental constitutional right per Germans and other Europeans and that certain U.S. laws and practices -- such as keeping data for 99 years -- were problematic in the EU. (Note: The Pruem Agreement does not provide for blanket sharing of terrorism-related biographic/biometric data, but rather creates a "hit no-hit," query-based system with mechanisms to permit follow-up data to be shared on a case-by-case basis. End Note.)

¶7. (C) The AG said it is important to find a mechanism for sharing information, and highlighted biographic and biometric (fingerprints and DNA) information as priorities. He said we are willing to sit down with the Germans and look into how we can expand exchanges of information while respecting data-privacy and other rights.

Divergent views on military tribunals

¶8. (C) AG Gonzales continued the discussion of the legal underpinnings of the Global War on Terror in a subsequent meeting with Justice Minister Brigitte Zypries. Zypries expressed reservations about the provisions of the MCA, arguing that it is inappropriate for military tribunals to try civilians, even those who had engaged in hostile acts. The AG explained the justification for the category of "unlawful enemy combatant" and maintained that it is both lawful and appropriate to resort to military tribunals in

cases involving armed conflict, even with non-state actors. The Attorney General asked Zypries what Germany would do with individuals captured firing on German troops in Afghanistan -- would they bring them back to Germany or pursue action through the German legal system? Zypries reiterated Germany's preference for handling such cases via traditional criminal law procedures. She noted Germany has in fact faced this situation, that civilian criminal legal proceedings in Germany would have been possible, but the Germans had turned those captured attacking German soldiers over to the Afghan authorities instead.

Data-sharing

¶9. (C) Attorney General Gonzales also raised improving data-sharing to fight international terrorism in the meeting with Zypries, with the Justice Minister signaling willingness to explore possibilities for increased cooperation while maintaining reservations about the amounts and types of information to be shared. The AG emphasized that we are not seeking broad-based access to sensitive personal data, but rather hope to expand possibilities for a targeted exchange of data based on a "Pruem-like" query system. He said the U.S. would give a presentation on what we are doing with data protection during the U.S.-EU Troika meetings in November.

Intellectual Property Rights

¶10. (C) Zypries raised the issue of intellectual property rights (IPR), noting that, while German laws on trademark infringement were working well, the fact that information is increasingly being digitized creates new challenges with respect to copyright protection. In response to the Attorney General's question, Zypries outlined Germany's work on IPR protection with China, characterizing German-Chinese cooperation as good and noting that a broad-based, structured bilateral dialogue is underway.

Holocaust Foundation lawsuit

¶11. (C) Zypries also raised the pending litigation relating to the German Holocaust Compensation Foundation, "Remembrance, Responsibility and the Future." She recalled that a fundamental goal of the Foundation had

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been to preclude the need for future legal actions relating to the compensation of Holocaust-era slave and forced laborers, and noted that the U.S. -- as one of the foremost supporters of the Foundation -- had "routinely" intervened in the past to help get lawsuits dismissed. Zypries said the German Government's fear is that failure to get this case dismissed could open the door for much more litigation, and urged the Attorney General to seek U.S. intervention in this case as well. The AG undertook to consult with Secretary Rice regarding the case.

PUBLIC OUTREACH

¶12. (SBU) In addition to his meetings with his counterparts, in Berlin the Attorney General gave a speech ("The Rule of Law in the War on Terror") to a group of more than 150 invited guests from government, academia, and the NGO community. As in his official meetings, the Attorney General focused on dispelling misconceptions, especially regarding the Military Commissions Act. The event, co-hosted by the Embassy and the German Marshal Fund, enabled the AG to reach a wider audience and engage in give-and-take discussion with

members of the audience. The Attorney General also held a round table discussion with senior editors and reporters of all prominent German media.

113. (U) This message was cleared by the Attorney General's staff subsequent to his departure.

TIMKEN JR